



**STATE OF TENNESSEE
DEPARTMENT OF CHILDREN'S SERVICES**

**ANNOUNCEMENT OF FUNDING
FOR
SHELBY REGION
THERAPEUTIC FOSTER CARE
RFS #359.30-577**

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1. INTRODUCTION

Statement of Purpose

The purpose of this **FUNDING OPPORTUNITY** is to define the State's minimum requirements, solicit proposals, and gain adequate information by which the State may evaluate the services offered by Proposers.

The State of Tennessee, Department of Children's Services (DCS), hereinafter referred to as the State, intends to secure contract for Therapeutic Foster Care Services.

General Information

The program is specifically designed to accommodate the needs of emotionally disturbed and behaviorally disordered children who are at risk for failure or have failed in regular foster homes, have been unable to live with their own families, or who are going through a transitional period from group care as part of the process of return to family and community. Services are further defined in the DCS Provider Policy Manual.

Service Details

Region:	Shelby Region
Level of Service:	Therapeutic Foster Care
Requested Slots:	20
Requested Bed Days:	8540
Effective Date of Services:	May 1, 2007
Population to be served:	Males and Females
Special Requirements:	Resource homes must be in Shelby County and be able to serve African American teenagers.

Scope of Service

The scope of services is detailed in the Department of Children's Services Provider Policy Manual which may be found at <http://www.state.tn.us/youth/providers/index.htm>.

Contract Duration

Contract Term. This Contract shall be effective for the period commencing on May 1, 2007 and ending on June 30, 2008. The State shall have no obligation for services rendered by the Contractor, which are not performed within the specified period.

Proposal Deadline

Proposals shall be submitted no later than the Proposal Deadline time and date detailed in the Section 2, Schedule of Events. A Proposer's failure to submit a proposal as required before the deadline shall cause the proposal to be disqualified.

Proposers assume the risk of the method of dispatch chosen. The State assumes no responsibility for delays caused by any delivery service. Postmarking by the due date shall not substitute for actual proposal receipt by the State. Late proposals shall not be accepted nor shall additional time be granted to any potential Proposer.

Proposals may not be delivered orally, by facsimile transmission, or by other telecommunication or electronic means.

2. ANNOUNCEMENT OF FUNDING SCHEDULE

The following Schedule of Events represents the State's best estimate of the schedule that shall be followed. Unless otherwise specified, the time of day for the following events shall be between 8:00 a.m. and 4:30 p.m., Central Time.

The State reserves the right, at its sole discretion, to adjust this schedule as it deems necessary. Notification of any adjustment to the Schedule of Events shall be provided to all vendors.

	EVENT	DATE	TIME
1	State Issues Announcement of Funding	March 22, 2007	
2	Deadline for Submitting a Proposal <u>and</u> State Opens Proposals	April 20, 2007	10:00 a.m.
3	State Sends a written Notice to Proposers <u>and</u> State Opens Files for Public Inspection	April 25, 2007	
4	Anticipated Contract Start Date	May 1, 2007	

3. COMMUNICATION REQUIREMENTS AND OTHER INFORMATION

COORDINATOR:

The following Coordinator shall be the main point of contact for this Announcement of Funding.

David Arrington
Department of Children's Services
436 6th Avenue North
7th Floor, Cordell Hull Building
Nashville, TN 37243
Telephone Number: (615) 532-7849
Fax Number: (615) 244-8969
Email Address david.Arrington@state.tn.us

Communications Regarding the Announcement of Funding

- All vendor communications concerning this procurement must be directed to the Coordinator. Unauthorized contact regarding this procurement with other State employees of the procuring state agency may result in disqualification.
- All communications should be in writing to the Coordinator. Any oral communications shall be considered unofficial and nonbinding on the State
- E-mail communications are acceptable.
- The State shall respond in writing to written communications. The State reserves the right, at its sole discretion, to determine appropriate and adequate responses to written comments, questions, and requests for clarification.

Right of Rejection

- The State reserves the right, at its sole discretion, to reject any and all proposals or to cancel the Announcement of Funding in its entirety.
- Any proposal received, which does not meet the requirements of this Announcement of Funds, may be considered to be nonresponsive, and the proposal may be rejected.

Selection Criterion

All proposals are reviewed by a group of state employees selected by the Department of Children's Services. The minimum number of state employees on a review team will be three (3). Based on the evaluations of the panel selections will be made and submitted for final approval to the Commissioner of the Department of Children's services or his/her designee.

The Department of Children's Services reserves the right to further negotiate proposals submitted for consideration.

4. PROPOSAL INFORMATION

SUBMITTING THE PROPOSAL:

- All proposals MUST be submitted to the Department of Children's Services at the following address:

David Arrington
Department of Children's Services
436 6th Avenue North
7th Floor, Cordell Hull Building
Nashville, TN 37243

5. PROPOSAL FORMAT AND CONTENT

Any proposal received which does not meet the requirements of this Announcement of Funds, may be considered to be nonresponsive, and the proposal may be rejected.

- Proposals should be prepared simply and economically and provide a straightforward, concise description of the Proposer's capabilities to satisfy the requirements of the Announcement of Funds. Emphasis should be on completeness and clarity of content.
- Proposers must follow all formats and address all portions of the Announcement of Funds set forth herein providing all information requested. Any proposal received, which does not meet the requirements of this Announcement of Funds, may be considered to be nonresponsive, and the proposal may be rejected.
- Proposers must respond to every section identified. Proposers must label each response with the section numbers associated with the subject requirement.
- Proposal materials must be submitted in the order indicated on the checklist, Section 6. Proposal Requirements.

Failure to follow the specified format, to label the responses correctly, or to address all of the sections may, at the State's sole discretion, result in the rejection of the Proposal.

- Proposals shall be type written, double spaced on standard 8 1/2" x 11" white paper, Font size of 10 with 1" margins.
- All proposal pages must be numbered and stapled or otherwise secured.
- The proposal must include a table of contents
- The number of copies for each item must be submitted as indicated.

6. PROPOSAL REQUIREMENTS

FAILURE TO PROVIDE ANY OF THE INFORMATION INDICATED BELOW AND IN THE SPECIFIED FORMAT MAY BE CONSIDERED NONRESPONSIVE AND RESULT IN THE REJECTION OF THE PROPOSAL.

Each PROPOSAL **must** include the items listed below:

1. Cover page:
 - Announcement of Funding # 359.30-577
 - Federal Employee Identification Number (FEIN);
 - Therapeutic Foster Care
 - Include the names, addresses, contact names, and phone number for the agency.
 - State of Incorporation
 - Profit or Non-Profit
2. Include verification that the Proposer is licensed and in good standing by the Department of Children's Services to provide the service(s) required. License required is:

✓ DCS Child Placing

FAILURE TO PROVIDE THIS INFORMATION MAY RESULT IN THE REJECTION OF THE PROPOSAL.

3. Include a copy of the Proposer's public liability insurance. The liability insurance **must** be in effect and current (cannot have an expiration date before the contract begin date).

FAILURE TO PROVIDE THIS INFORMATION MAY RESULT IN THE REJECTION OF THE PROPOSAL.

4. Program staff qualifications.
5. Program narrative:
 - Address ability to provide services to target population [African American teenagers];
 - Address ability to meet regional needs [located in Shelby Region];
 - Address ability to meet scope of services as detailed in Attachment A and Department of Children's Services Provider Policy Manual:
 - ✓ Range of services provided
 - ✓ Staff caseload ratio
 - ✓ Staffing Pattern
 - ✓ Adjunct and specialized services
 - ✓ Plan for respite
 - ✓ Type of behavior modification/treatment modality
 - ✓ Summary of foster parent recruitment, retention & training
 - ✓ Practice of family and sibling visitation
 - ✓ Policy on Child & Family team meetings

- ✓ Case Management
 - ✓ Tracking and assessment of agency outcomes
 - Outline coordination with DCS, families, court and community resources.
 - Outline ability to meet DCS outcomes.
 - ✓ Child Safety
 - ✓ Permanency
 - ✓ Child Movement
 - ✓ Reporting
 - Location of foster homes. **Must** provide a list of foster homes that would provide services : include the name of the foster home and the address. Foster homes **must** be located in the region.
 - Ability to meet Brian A Consent decree compliance and principles.
 - Provide a description of **all** services Provider offers to children and families.
 - Provide information detailing your ability and willingness to accept referrals on an emergency basis or with limited information at admission. Outline your capacity to meet this need.
6. Include **Five (5) Copies** of your proposal.

7. PRO FORMA CONTRACT

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF CHILDREN'S SERVICES
AND
[PRIVATE PROVIDER NAME]**

This Contract, issued under Special Delegated Authority (DA NUMBER), by and between the State of Tennessee, Department of Children's Services (DCS), hereinafter referred to as the "State" and [PRIVATE PROVIDER LEGAL ENTITY NAME], hereinafter referred to as the "Private Provider," is for the provision of [SHORT DESCRIPTION OF THE SERVICE], as further defined in the "SCOPE OF SERVICES" contained in the DCS Provider Policy Manual herein attached by reference.

The Private Provider is [AN INDIVIDUAL / A FOR-PROFIT CORPORATION / A NONPROFIT CORPORATION / A SPECIAL PURPOSE CORPORATION OR ASSOCIATION / A FRATERNAL OR PATRIOTIC ORGANIZATION / A PARTNERSHIP / A JOINT VENTURE / A LIMITED LIABILITY COMPANY]. The Private Provider's address is:

[ADDRESS]

The Private Provider's place of incorporation or organization is [STATE OF ORGANIZATION].

A. SCOPE OF SERVICES:

- A.1. The Private Provider shall provide up to but not exceeding (NUMBER) client days of (TYPE OF SERVICE) services. This service is more fully described in the DCS Provider Policy Manual.
- A.2. The Private Provider must maintain appropriate licensure required to provide the services covered by this contract. The Private Provider must notify the DCS Contracts and Grants Management Division immediately, in writing, of any change in licensure status.
- A.3. The Private Provider shall invoice DCS monthly for services provided. Such invoices shall be submitted to DCS not later than thirty (30) days after the end of the month in which the service was rendered.
- A.4. The DCS shall evaluate each contract annually to ensure accountability, cost-effectiveness of service provision, and achievement of positive outcomes for children and families.
- A.4.a. DCS shall evaluate Private Provider in the following areas as detailed in the DCS Provider Policy Manual including any changes or additions that may subsequently be made:
 - 1. Child Safety
 - 2. Movement
 - 3. Permanency/Successful Program Completion
 - 4. Family Involvement:
 - 5. Reporting and Compliance:
- A.5. The Private Provider will be evaluated on ongoing basis in regards to the above factors, with at least an annual review of compliance, service history, and performance in at least a minimum of the areas listed above.
- A.6. The Private Provider will work in compliance with the system DCS is developing for continuous quality improvement, which includes, but is not limited to, the Quality Service Review, the DCS Balanced Scorecard, and the ongoing monitoring and evaluation of performance.

- A.7. The Private Provider must notify the DCS Home County Case Manager and the respective Resource Case Manager prior to the move of a child. Notification of Emergency moves must be made the next business day. A move is any change in placement location except for temporary breaks in service as further defined in the Provider Policy Manual incorporated herein by reference.
- A.8. If foster home services are provided as a part of this contract, the Private Provider will place children only in foster homes in full compliance with DCS Administrative Policy 16.4 "Foster Home Study, Evaluation and Training Process" on the date of placement.
- A.9. Monthly evaluations will occur for notification of placement changes and placement in approved foster homes.
- A.10. The Private Provider will incorporate accept the Child & Adolescent Needs and Strengths (CANS) assessment analysis for establishing a level of care recommendation upon implementation by DCS.
- A.11. Reports: The Private Provider shall report to the County Case Manager on or before the 5th day of each month the prior month's face-to-face contact information on every child currently placed with the Private Provider as defined in the DCS Provider Policy Manual. The information must be submitted to DCS in form and substance acceptable to the state and must include child specific identifying information related to the following:
 - a. The number of face-to-face contact between custodial child and siblings;
 - b. The number of face-to-face contacts with parent(s) or adults identified as potential permanency placement on permanency plan; and
 - c. The number of children and families involved in service planning.
 - d. The number of face-to face contacts between custodial child and Private Provider Case Manager.

B. CONTRACT TERM:

- B.1. Contract Term. This Contract shall be effective for the period commencing on **May 01, 2007** and ending on **June 30, 2008**. The State shall have no obligation for services rendered by the Private Provider which are not performed within the specified period.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed eight hundred eight thousand, eight hundred twenty-three dollars and forty cents, (\$808,823.40). The Payment Rates in Section C.3 shall constitute the entire compensation due the Private Provider for the Service and all of the Private Provider's obligations hereunder regardless of the difficulty, materials or equipment required. The Payment Rates include, but are not limited to, all applicable taxes, fees, overheads, profit, and all other direct and indirect costs incurred or to be incurred by the Private Provider.

The Private Provider is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Private Provider and does not guarantee payment of any such funds to the Private Provider under this Contract unless the State requests work and the Private Provider performs said work. In which case, the Private Provider shall be paid in accordance with Payment Rates detailed in Section C.3. The State is under no obligation to request work from the Private Provider in any specific dollar amounts or to request any work at all from the Private Provider during any period of this Contract.

- C.2. Compensation Firm. The Payment Rates in Section C.3 and the maximum liability of the State under this Contract are firm for the duration of the Contract and are not subject to increase for any reason unless amended.

- C.3. Payment Methodology. The Private Provider shall be compensated based on the Payment Rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1. The Private Provider shall be compensated based upon the following Payment Rates:

SERVICE

PAYMENT RATE PER CHILD PER DAY

Therapeutic Foster Care

\$94.71

A day shall be defined as any period of time in the 24-hour period normally considered a day. For each child served, the Private Provider shall multiply the payment rate by the number of days the child is in the Private Provider's facility and/or program, but not for the date of termination from the program.

The Private Provider shall not be compensated for travel time to the primary location of service provision.

The Private Provider shall submit monthly invoices, in form and substance acceptable to the State with all of the necessary supporting documentation, prior to any payment. Such invoices shall, at a minimum, include a unique invoice number, specific child identifying information, the dates of service, and the county of service provision.

- C.3.a. If the Private Provider fails to comply with the provisions of Section A.3. of the Scope of Services, the Private Provider shall forfeit payment for those services.
- C.4. Travel Compensation. The Private Provider shall not be compensated or reimbursed for travel, meals, or lodging.
- C.5. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.
- C.6. Invoice Reductions. The Private Provider's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this contract, not to constitute proper remuneration for compensable services.
- C.7. Deductions. The State reserves the right to deduct from amounts which are or shall become due and payable to the Private Provider under this or any contract between the Private Provider and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Private Provider.
- C.8. Automatic Deposits. The Private Provider shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Private Provider by the State. Once this form has been completed and submitted to the State by the Private Provider all payments to the Private Provider, under this or any other contract the Private Provider has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Private Provider shall not invoice the State for services until the Private Provider has completed this form and submitted it to the State.
- D. STANDARD TERMS AND CONDITIONS:
- D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.

- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Private Provider at least thirty (30) days written notice before the effective termination date. The Private Provider shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Private Provider for compensation for any service which has not been rendered. Upon such termination, the Private Provider shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Private Provider fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Private Provider violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Private Provider shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Private Provider.
- D.5. Subcontracting. The Private Provider shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract pertaining to "Conflicts of Interest" and "Nondiscrimination" (sections D.6. and D.7.). Notwithstanding any use of approved subcontracts, the Private Provider shall be the prime Contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Private Provider warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Private Provider in connection with any work contemplated or performed relative to this Contract.
- D.7. Nondiscrimination. The Private Provider hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Private Provider on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Private Provider shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Records. The Private Provider shall maintain documentation for all charges against the State under this Contract. The books, records, and documents of the Private Provider, insofar as they relate to work performed or money received under this contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.9. Monitoring. The Private Provider's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.10. Progress Reports. The Private Provider shall submit brief, periodic, progress reports to the State as requested.
- D.11. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.12. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the

parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

The Private Provider, being an independent Contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Private Provider's employees, and to pay all applicable taxes incident to this Contract.

- D.13. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.14. Force Majeure. The obligations of the parties to this contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, strikes, epidemics or any other similar cause.
- D.15. State and Federal Compliance. The Private Provider shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.16. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Private Provider agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Private Provider acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under **Tennessee Code Annotated**, Sections 9-8-101 through 9-8-407.
- D.17. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.18. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.19. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below or to such other party, facsimile number, or address as may be hereafter specified by written notice.

The State:

[NAME AND TITLE OF STATE PRIVATE PROVIDER CONTACT PERSON]
[STATE PRIVATE PROVIDER NAME]
[ADDRESS]
[TELEPHONE NUMBER]
[FACSIMILE NUMBER]

The Private Provider:

[NAME AND TITLE OF PRIVATE PROVIDER CONTACT PERSON]
[PRIVATE PROVIDER NAME]
[ADDRESS]
[TELEPHONE NUMBER]
[FACSIMILE NUMBER]

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the day of delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically by the telefax machine at the receiving location and receipt is verbally confirmed by the sender if prior to 4:30 p.m. CST. Any communication by facsimile transmission shall also be sent by United States mail on the same date of the facsimile transmission.

E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Private Provider. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Private Provider shall cease all work associated with the Contract. Should such an event occur, the Private Provider shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Private Provider shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

E.4. Breach. A party shall be deemed to have breached the Contract if any of the following occurs:

- failure to perform in accordance with any term or provision of the Contract;
- partial performance of any term or provision of the Contract;
- any act prohibited or restricted by the Contract, or
- violation of any warranty.

For purposes of this contract, these items shall hereinafter be referred to as a "Breach."

a. Private Provider Breach— The State shall notify Private Provider in writing of a Breach.

- (1) In event of a Breach by Private Provider, the state shall have available the remedy of Actual Damages and any other remedy available at law or equity.
- (2) Liquidated Damages— In the event of a Breach, the State may assess Liquidated Damages. The parties agree that due to the complicated nature of the Private Provider's obligations under this contract it would be difficult to specifically designate a monetary amount for a Breach by Private Provider as said amounts are likely to be uncertain and not easily proven. Regardless of such uncertainty, Private Provider and State agree that the State may withhold as liquidated damages five hundred dollars (\$500.00) per child per day affected by the breach until the Private Provider cures the breach, the State exercises its option to declare a partial default, or the State terminates the Contract. Such amount represents the costs and efforts necessary to procure an alternate vendor(s) to provide the defaulted service; re-staff individual cases, provide or perform the contract requirements; and/or facilitate contract compliance by the Private Provider. Private Provider hereby represents and covenants it has carefully reviewed the Liquidated Damages contained above and agree that said amounts represent a reasonable relationship between the amount and what might reasonably be expected in the event of Breach, and are a reasonable estimate of the damages that would occur from a Breach. It is hereby agreed between the parties that the Liquidated Damages represent solely the damages and injuries sustained by the State in losing the benefit of the bargain with Private Provider and do not include any injury or damage sustained by a third party. The Private Provider agrees that the liquidated damage amount is in addition to any amounts Private Provider may owe the State pursuant to the indemnity provision or other section of this Contract.

The State may continue to withhold the Liquidated Damages or a portion thereof until

the Private Provider cures the Breach, the State exercises its option to declare a Partial Default, or the State terminates the Contract. The State is not obligated to assess Liquidated Damages before availing itself of any other remedy. The State may choose to discontinue Liquidated Damages and avail itself of any other remedy available under this Contract or at law or equity; provided, however, Private Provider shall receive a credit for said Liquidated Damages previously withheld except in the event of a Partial Default.

- (3) Partial Default— In the event of a Breach, the State may declare a Partial Default. In which case, the State shall provide the Private Provider written notice of: (1) the date which Private Provider shall terminate providing the service associated with the Breach; and (2) the date the State will begin to provide the service associated with the Breach. Notwithstanding the foregoing, the State may revise the time periods contained in the notice written to the Private Provider.

In the event the State declares a Partial Default, the State may withhold, together with any other damages associated with the Breach, from the amounts due the Private Provider the greater of: (1) amounts which would be paid the Private Provider to provide the defaulted service; or (2) the cost to the State of providing the defaulted service, whether said service is provided by the State or a third party. To determine the amount the Private Provider is being paid for any particular service, the Department shall be entitled to receive within five (5) days any requested material from Private Provider. The State shall make the final and binding determination of said amount.

The State may assess Liquidated Damages against the Private Provider for any failure to perform which ultimately results in a Partial Default with said Liquidated Damages to cease when said Partial Default is effective. Upon Partial Default, the Private Provider shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount. Private Provider agrees to cooperate fully with the State in the event a Partial Default is taken

- (4) Contract Termination— In the event of a Breach, the State may terminate the Contract immediately or in stages. The Private Provider shall be notified of the termination in writing by the State. Said notice shall hereinafter be referred to as Termination Notice. The Termination Notice may specify either that the termination is to be effective immediately, on a date certain in the future, or that the Private Provider shall cease operations under this Contract in stages. In the event of a termination, the State may withhold any amounts which may be due Private Provider without waiver of any other remedy or damages available to the State at law or at equity. The Private Provider shall be liable to the State for any and all damages incurred by the State and any and all expenses incurred by the State which exceed the amount the State would have paid Private Provider under this Contract. Private Provider agrees to cooperate with the State in the event of a Contract Termination or Partial Takeover.

- b. State Breach— In the event of a Breach of contract by the State, the Private Provider shall notify the State in writing within 30 days of any Breach of contract by the State. Said notice shall contain a description of the Breach. Failure by the Private Provider to provide said written notice shall operate as an absolute waiver by the Private Provider of the State's Breach. In no event shall any Breach on the part of the State excuse the Private Provider from full performance under this Contract. In the event of Breach by the State, the Private Provider may avail itself of any remedy at law in the forum with appropriate jurisdiction; provided, however, failure by the Private Provider to give the State written notice and opportunity to cure as described herein operates as a waiver of the State's Breach. Failure by the Private Provider to file a claim before the appropriate forum in Tennessee with jurisdiction to hear such claim within one (1) year of the written notice of Breach shall operate as a waiver of said claim in its entirety. It is agreed by the parties this provision establishes a contractual period of limitations for any claim brought by the Private Provider.

E.5. Partial Takeover. The State may, at its convenience and without cause, exercise a partial takeover of any service which the Private Provider is obligated to perform under this Contract, including but not limited to any service which is the subject of a subcontract between Private Provider and a third party, although the Private Provider is not in Breach (hereinafter referred to as "Partial Takeover"). Said Partial Takeover shall not be deemed a Breach of Contract by the State. Private Provider shall be given at least 30 days prior written notice of said Partial Takeover with said notice to specify the area(s) of service the State will assume and the date of said assumption. Any Partial Takeover by the State shall not alter in any way Private Provider's other obligations under this Contract. The State may withhold from amounts due the Private Provider the amount the Private Provider would have been paid to deliver the service as determined by the State. The amounts shall be withheld effective as of the date the State assumes the service. Upon Partial Takeover, the Private Provider shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

E.6. Incorporation of Additional Documents. Included in this Contract by reference are the following documents:

- a. The Contract document and its attachments;
- b. The document entitled "DCS Provider Policy Manual" (the Document) including any changes or additions that may subsequently be made, herein attached by reference.

In the event of a discrepancy or ambiguity regarding the Private Provider's duties, responsibilities, and performance under this Contract, these documents shall govern in order of precedence detailed above.

E.7. Workpapers Subject to Review. The Private Provider shall make all audit, accounting, or financial analysis workpapers, notes, and other documentation available for review by the Comptroller of the Treasury or his representatives, upon request, during normal working hours either while the analysis is in progress or subsequent to the completion of this Contract.

E.8. Lobbying. The Private Provider certifies, to the best of its knowledge and belief, that:

No federally appropriated funds have been paid or will be paid, by or on behalf of the Private Provider, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, and entering into any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Private Provider shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The Private Provider shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-grants, subcontracts, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients of federally appropriated funds shall certify and disclose accordingly.

E.9. Prohibited Advertising. The Private Provider shall not refer to this Contract or the Private Provider's relationship with the State hereunder in commercial advertising in such a manner as to state or imply that the Private Provider or the Private Provider's services are endorsed.

E.10. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Private Provider by the State or acquired by the Private Provider on behalf of the State shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and

regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Private Provider to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

The Private Provider's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Private Provider of this Contract; previously possessed by the Private Provider without written obligations to the State to protect it; acquired by the Private Provider without written restrictions against disclosure from a third party which, to the Private Provider's knowledge, is free to disclose the information; independently developed by the Private Provider without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure. Nothing in this paragraph shall permit Private Provider to disclose any information that is confidential under federal or state law or regulations, regardless of whether it has been disclosed or made available to the Private Provider due to intentional or negligent actions or inactions of agents of the State or third parties.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

- E.11. HIPAA Compliance. The State and Private Provider shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations.
- a. Private Provider warrants to the State that it is familiar with the requirements of HIPAA and its accompanying regulations, and will comply with all applicable HIPAA requirements in the course of this contract.
 - b. Private Provider warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by HIPAA and its regulations, in the course of performance of the contract so that both parties will be in compliance with HIPAA.
 - c. The State and the Private Provider will sign documents, including but not limited to business associate agreements, as required by HIPAA and that are reasonably necessary to keep the State and Private Provider in compliance with HIPAA. This provision shall not apply if information received by the State under this contract is NOT "protected health information" as defined by HIPAA, or if HIPAA permits the State to receive such information without entering into a business associate agreement or signing another such document.
- E.12. Public Accountability. If this Contract involves the provision of services to citizens by the Private Provider on behalf of the State, the Private Provider agrees to establish a system through which recipients of services may present grievances about the operation of the service program, and the Private Provider agrees to display a sign stating:
- "NOTICE: This Private Provider is a recipient of taxpayer funding. if you observe an employee engaging in any activity which you consider to be illegal or improper, please call the State Comptroller's toll free hotline: 1-800-232-5454"
- Said sign shall be displayed in a prominent place, located near the passageway(s) through which the public passes to receive State funded services.
- E.13. Environmental Tobacco Smoke. Pursuant to the provisions of the federal "Pro-Children Act of 1994" and the Tennessee "Children's Act for Clean Indoor Air of 1995," the Private Provider shall prohibit smoking of tobacco products within any indoor premises in which services are provided pursuant to this Contract to individuals under the age of eighteen (18) years. The Private Provider shall post "no smoking" signs in appropriate, permanent sites within such premises. This prohibition shall be applicable during all hours, not just the hours in which children are present. Violators of the prohibition may be subject to civil penalties and fines. This prohibition shall apply to and be made part of any subcontract related to this Contract.

- E.14. Date/Time Hold Harmless. As required by **Tennessee Code Annotated**, Section 12-4-118, the Private Provider shall hold harmless and indemnify the State of Tennessee; its officers and employees; and any Private Provider or political subdivision of the State for any breach of contract caused directly or indirectly by the failure of computer software or any device containing a computer processor to accurately or properly recognize, calculate, display, sort or otherwise process dates or times.
- E.15. Hold Harmless. The Private Provider agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Private Provider, its employees, or any person acting for or on its or their behalf relating to this Contract. The Private Provider further agrees it shall be liable for the reasonable cost of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Private Provider to the State.

In the event of any such suit or claim, the Private Provider shall give the State immediate notice thereof and shall provide all assistance required by the State in the State's defense. The State shall give the Private Provider written notice of any such claim or suit, and the Private Provider shall have full right and obligation to conduct the Private Provider's own defense thereof. Nothing contained herein shall be deemed to accord to the Private Provider, through its attorney(s), the right to represent the State of Tennessee in any legal matter, such rights being governed by **Tennessee Code Annotated**, Section 8-6-106.

- E.16. Tennessee Consolidated Retirement System. The Private Provider acknowledges and understands that, subject to statutory exceptions contained in **Tennessee Code Annotated**, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System, provides that if a retired member returns to State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Private Provider agrees that if it is later determined that the true nature of the working relationship between the Private Provider and the State under this Contract is that of "employee/employer" and not that of an independent Private Provider, the Private Provider may be required to repay to the Tennessee Consolidated Retirement System the amount of retirement benefits the Private Provider received from the Retirement System during the period of this Contract.
- E.17. Debarment and Suspension. The Private Provider certifies, to the best of its knowledge and belief, that it and its principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or State department or Private Provider;
 - b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offence in connection with obtaining attempting to obtain, or performing a public (Federal, State, or Local) transaction or grant under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
 - c. are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or Local) with commission of any of the offenses detailed in section b. of this certification; and
 - d. have not within a three (3) year period preceding this Contract had one or more public transactions (Federal, State, or Local) terminated for cause or default.
- E.18. Cost Report. If requested by the State, the Private Provider shall complete a cost report using the best information available in accordance with the cost reporting instructions. The Private Provider shall also submit its most recent audited financial statements as requested by the State.
- E.19. Occupancy. The Private Provider acknowledges that this is a fee for service Contract and that neither the State nor the Private Provider can guarantee full occupancy.

- E.20. First Amendment. The Private Provider does not waive rights under the First Amendment to the United States Constitution.
- E.21. Drug Free Workplace. The Private Provider shall provide a drug-free workplace pursuant to the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F.
- E.22. Financial Information Required. The State must comply with the Office of Management and Budget Circular (OMB) A-87 to claim reimbursement for a portion of the cost of payments made under this contract from the federal government under Title IV-E and/or Title XIX. Information will be periodically required to be submitted by the Private Provider to enable DCS to comply with OMB A-87 and facilitate submission of claims to the federal government in accordance with DCS' federally approved cost allocation plan. Private Provider will be notified at the time documentation is requested the date the submission is required. The documentation to be submitted by the Private Provider will include but not limited to:
- a. Annual Contracted Private Provider Cost Report completing the forms and following the directions provided by the state;
 - b. Program description and two weekly schedules;
 - c. Audited financial statement with audit opinion for the audited period;
 - d. Reconciliation of the Cost Report to the independent audit; and
 - e. Letter under separate cover from independent auditor on whether the cost allocation method used by the Private Provider in the Cost Report appears to be reasonable.
- Failure to submit the above-stated documentation on the specified date shall be deemed a breach of the Contract and the State shall have a right to terminate the contract for cause under Section D.4. of the Contract, or to consider such failure a Partial Default.
- E.23. Supplemental Conflict of Interest. The Private Provider shall not have any owner, member of the board of directors, or member of the board of trustees of that Contract Private Provider who also holds any other position which may influence the placements provided to children in the plaintiff class of Brian A. v. Phil Bredeesen. Such positions include, but are not limited to juvenile court judges, referees or other court officers involved in the individual cases of children in foster care.
- E.24. Requirements Bureau of TennCare. The Private Provider must comply with the following requirements as stipulated in the agreement between The Department of Children's Services and the Department of Finance and Administration, Bureau of TennCare.
- a. The Private Provider must disclose the following information in accordance with the Code of Federal Regulations, Title 42, Part 455, Subpart B:
 - (1) The name and address of each person with an ownership or control interest in the disclosing entity or in any subcontractor in which the disclosing entity has direct or indirect ownership of 5 percent or more;
 - (2) Whether any of the persons named, in compliance with paragraph (a)(1) of this section, is related to another as spouse, parent, child, or sibling;
 - (3) The name of any other disclosing entity in which a person with an ownership or control interest in the disclosing entity also has an ownership or control interest. This requirement applies to the extent that the disclosing entity can obtain this information by requesting it in writing from the person. The disclosing entity must—
 - (i) Keep copies of all these requests and the responses to them;
 - (ii) Make them available to the Secretary or the Medicaid Agency upon request; and
 - (iii) Advise the Medicaid Agency when there is no response to a request.
 - b. The Private Provider must furnish to the Medicaid Agency or to the Secretary on request, information related to business transactions in accordance with paragraph (1) of this section.

- (1) The Private Provider must submit, within 35 days of the date on a request by the Secretary or the Medicaid Agency, full and complete information about:
 - (i) The ownership of any subcontractor with whom the Private Provider has had business transactions totaling more than \$25,000 during the 12-month period ending on the date of the request; and
 - (ii) Any significant business transactions between the Private Provider and any wholly owned supplier, or between the Private Provider and any subcontractor, during the 5-year period ending on the date of the request.
- c. Before DCS enters into or renews a contract, or at any time upon written request by the Medicaid Agency, the Private Provider must disclose to DCS and the Medicaid Agency the identity of any person who:
 - (1) Has ownership or control interest in the Private Provider, or is an agent or managing employee of the Private Provider; and
 - (2) Has been convicted of a criminal offense related to that person's involvement in any program under Medicare, Medicaid, or the title XX services program since the inception of those programs.

The Medicaid Agency must notify the Inspector General of the Department of any disclosures made under paragraph (c) of this section within 20 working days from the date it receives the information. The Private Provider must also promptly notify the Inspector General of the Department of any action it takes on the provider's application for participation in the program.

- d. DCS or the Medicaid Agency may refuse to enter into or renew an agreement with a Private Provider if any person who has an ownership or control interest in the Private Provider, or who is an agent or managing employee of the Private Provider, has been convicted of a criminal offense related to that person's involvement in any program established under Medicare, Medicaid or the title XX Services Program.
- e. DCS or Medicaid Agency may refuse to enter into or may terminate a Private Provider agreement if it determines that the Private Provider did not fully and accurately make any disclosure required under paragraph (c) of this section.
- f. Participation in the Medicaid program will be limited to Private Providers who:
 1. Accept, as payment in full, the amounts paid by Medicaid or paid in lieu of Medicaid by a third party (Medicare, insurance, etc.);
 2. Maintain Tennessee, or the State in which they practice, medical licenses and/or certifications as required by their practice;
 3. Are not under a federal Drug Enforcement Agency (DEA) restriction of their prescribing and/or dispensing certification for scheduled drugs...;
 4. Agree to maintain and provide access to Medicaid and/or its Private Provider all Medicaid recipient medical records for five (5) years from the date of service or upon written authorization from Medicaid following an audit, whichever is shorter;
 5. Provide medical assistance at or above recognized standards of practice; and
 6. Comply with all contractual terms and Medicaid policies as outlined in federal and state rules and regulations and Medicaid provider manuals and bulletins.

E.25. Supplemental Subcontracting In accordance with the Brian A. Settlement Agreement (specifically, the Racial Disparities Study conducted by Dr. Ruth McRoy) the Department is actively working towards decreasing the racial disparity between the service providers and the target service populations. To help correct this disparity, DCS strongly recommends, in situations where subcontracts are necessary, that the Private Provider subcontract for services with minority owned or operated Private Provider that can assist the Private Provider in meeting the needs of the children and families that are served. DCS requires that the Private Provider join the Department's commitment to achieving diversity and in developing programs that reflect the diversity of the population that we serve.

- E.26. Monitoring Subcontracts. The Private Provider shall develop written procedures for monitoring all DCS approved subcontracts. The procedures shall be available upon request to DCS and any other entity approved by DCS. The Private Provider shall have quality assurance/quality improvement plans for subcontractors. The Private Provider shall also establish and maintain an internal quality improvement process to assess its performance and that of its subcontractors.

The Private Provider shall not subcontract for services with any person or entity that has had a contract terminated by DCS for failure to satisfactorily perform or for cause; or has failed to implement a corrective action plan approved by DCS or any other governmental entity, after having received due notice.

- E.27. Operating Capital. The Private Provider shall maintain a plan to ensure access to operating capital of ninety (90) days, in the event payment to the Private Provider is interrupted for reasons beyond the Private Provider's control or in an emergency, for continuity of operations. This shall not include funds received from DCS under this contract.
- E.28. Private Provider Gatekeeper Contact. The Private Provider shall provide information to the Child Placement & Private Provider's Division (CPPP) relative to the Private Provider's gatekeeper or representative empowered to make placement decisions on behalf of the Private Provider that would allow access 24 hours a day seven days a week to DCS. The information to be provided are as follows: gatekeeper/representative name(s); title; direct telephone number(s), cell phone number and/or pager number(s).
- E.29. Performance Standards. By executing of this contract the Private Provider hereby acknowledges and agrees that its performance under this contract must meet the standards set forth in Section A of this contract and the DCS Provider Policy Manual and will be bound by the conditions set forth in this contract. If the Private Provider fails to meet these standards, as determined by the Child Placement & Private Providers Division, DCS, at its exclusive option, may allow up to six months for the provider to achieve compliance with the standards. If performance deficiencies are not resolved to the satisfaction of DCS within the prescribed time, and if no extenuating circumstances can be documented by the Private Provider to DCS' satisfaction, DCS may cancel the contract with the Private Provider. The determination of the extenuating or mitigating circumstances is the exclusive determination of DCS.
- E.30. Title VI of the Civil Rights Act of 1964. The Private Provider shall develop and deliver to DCS on or before July 31st of each fiscal year an implementation plan that describes the Private Provider's long-range goals and objectives that will guide the Private Provider's efforts to ensure compliance with Title VI of the Civil Rights Act of 1964 pursuant to the guidelines established by the Tennessee Title VI Compliance Commission. Title VI plans must be submitted to the division below on or before the July 31st of each year:
- Director of the Division of Diversity Initiatives
TPS Campus - Mensler #3
1276 Foster Avenue
Nashville, TN 37210
- E.31. Notification of Closure. The Private Provider shall notify DCS of the closure of a facility sixty (60) days prior to the date of closure. Failure to provide DCS 60 days written notice of a Private Provider's intent to close its facility shall be considered a breach of this contract and subject to the penalties defined in Section E4. Breach of this contract.
- E.32. Penalties. DCS reserves the right to assess penalties to Private Providers for failure to adhere to program and policy guidelines. The Private Provider shall be notified by letter and/or e-mail of non-compliance and given an opportunity to correct said non-compliance within a specified period. Potential penalties will be clearly defined in the notification.

IN WITNESS WHEREOF:

[PRIVATE PROVIDER LEGAL ENTITY NAME]:

[NAME AND TITLE]

Date

DEPARTMENT OF CHILDREN'S SERVICES:

Viola P. Miller Commissioner

Date